

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CERVANTES ORCHARDS & VINEYARDS, LLC, a Washington limited liability corporation; CERVANTES NURSERIES, LLC, a Washington limited liability corporation; CERVANTES PACKING & STORAGE, LLC, a Washington limited liability corporation; MANCHEGO REAL, LLC, a Washington limited liability corporation; JOSE G. CERVANTES and CYNTHIA C. CERVANTES, individually, and upon behalf of their community property marital estate;

NO: 1:14-CV-3125-RMP

ORDER REGARDING MOTIONS TO DISMISS AND MOTIONS FOR SUMMARY JUDGMENT

Plaintiffs.

V.

AMERICAN WEST BANK, a corporation; SKBHC HOLDINGS, LLC, a Washington limited liability corporation; T-16 MANAGEMENT CO, LTD, a Washington corporation; GARY JOHNSON and LINDA JOHNSON, individually and upon behalf of their community property marital estate; NW MANAGEMENT REALTY SERVICES, INC, a Washington corporation also known as Northwest Farm Management Company; and ROBERT WYLES and MICHELLE WYLES, individually and upon behalf of their community property marital estate,

Defendants.

1 Before the Court are motions to dismiss filed by Defendants AmericanWest
2 Bank (“AmericanWest”) and SKBHC Holdings, LLC (“SKBHC”), ECF No. 76,
3 and by Defendants Robert and Michelle Wyles, ECF No. 79. Also before the
4 Court are motions for summary judgment filed by Defendants T-16 Management
5 Co., Ltd. (“T-16”) and Gary and Linda Johnson, ECF No. 88, and by Defendant
6 SKBHC Holdings, LLC, ECF No. 122. The Court has reviewed all of the
7 documents filed in support of and in opposition to these motions, including
8 Plaintiffs’ supplemental authority, ECF No. 127.

9 **BACKGROUND**

10 Plaintiffs constitute a farming group that grows crops including apples,
11 pears, grapes, and cherries. ECF No. 74 at 4. Plaintiffs assert that Defendants
12 engaged in a broad scheme of misconduct involving racketeering, extortion, fraud,
13 and civil rights violations. *See* ECF No. 74 at 17-24. Plaintiffs claim that the
14 purpose of the scheme was to dispossess them of their property and business. *See*
15 ECF No. 74 at 17-18.

16 Plaintiffs assert that in October 2009, AmericanWest, in its role in the
17 scheme, refused to accept a credit application that Plaintiffs had filed. *See* ECF
18 No. 74 at 14. AmericanWest also allegedly refused applications for credit that
19 were filed by similarly situated Hispanic farm owners, required excessive collateral
20 to secure loans, and demanded immediate payment from Plaintiffs without a
21 rational justification. ECF No. 74 at 14-15. SKBHC is alleged to have acted in

1 concert and conspired with AmericanWest in regard to these practices, which
2 Plaintiffs contend were predicated on racial and ethnic prejudice. ECF No. 74 at
3 15.

4 Plaintiffs claim that Defendants' alleged scheme forced Plaintiff Cervantes
5 Orchards & Vineyards, LLC ("COV") to file for bankruptcy. *See* ECF No. 74 at 2.
6 A plan was adopted in COV's bankruptcy, requiring COV to satisfy its debt to
7 Deere Credit, Inc. ("DCI") by December 31, 2009.¹ ECF Nos. 74 at 5. COV
8 failed to repay DCI fully by the deadline, and on January 8, 2010, DCI moved the
9 bankruptcy court for an order appointing a liquidating agent pursuant to the terms
10 of the bankruptcy plan. ECF No. 74 at 6-7. The bankruptcy court appointed T-16
11 as the liquidating agent and ordered COV to turn over all control of the orchards
12 that constituted collateral for the debt owed to DCI. *See* ECF No. 74 at 7-8.
13 Defendant Gary Johnson is a director of T-16. *See* ECF No. 74, Ex. 1 at 2.

14 Plaintiffs contend that COV turned over control of the orchards to T-16 on
15 or before March 17, 2010. ECF No. 74 at 8. According to the Second Amended
16 Complaint, no farming activities or operations took place on the orchards for over
17 a week after T-16 took over, despite Plaintiff Jose Cervantes's warnings that the
18 orchards required frost protection. ECF No. 74 at 8. Plaintiffs assert that the
19

20 ¹ DCI, Deere & Company, John Deere Capital Corporation, John Deere Financial, f.s.b. f/k/a
21 FPC Financial, and Deere Credit Services, Inc. (collectively, the "Deere Defendants"), were
dismissed in a prior order. ECF No. 128.

1 failure to provide the necessary protection resulted in damage to the orchards.

2 ECF No. 74 at 8.

3 With DCI's approval, T-16 hired Northwest Management and Realty
4 Services, Inc., a.k.a Northwest Farm Management ("NWFM"), to manage the
5 property. ECF No. 74 at 8. Mr. Wyles was a partial owner of NWFM. *See* ECF
6 Nos. 74, Ex. 1 at 2; 95 at 2.

7 Plaintiffs claim that items of their personal property, smudge pots, were
8 wrongfully transported from the orchards "by persons believed to be employed by
9 NWFM" to farm land that Mr. Wyles owned and operated. ECF No. 74 at 9.

10 Plaintiffs further contend that Scott Anderson, another associate of NWFM, filed a
11 false declaration in bankruptcy court. *See* ECF No. 74 at 10. The false declaration
12 allegedly convinced the bankruptcy court to prohibit Mr. Cervantes from entering
13 the orchards, which in turn resulted in a number of injuries to Plaintiffs, including
14 that workers and supplies were diverted from COV's land to other land managed
15 by NWFM. *See* ECF No. 74 at 10-11.

16 Plaintiffs also assert that multiple Defendants sought to conceal from COV
17 and from the bankruptcy court a settlement agreement that concerned damage to
18 apples that a buyer had acquired at an apple orchard auction in June 2010. ECF
19 No. 74 at 13. The buyer, according to Plaintiffs' allegations, claimed that the
20 apples were damaged because of the failure to use proper sprays. ECF No. 74 at
21 13. Plaintiffs assert that NWFM, T-16, Mr. Wyles, and Mr. Anderson were parties

1 to the agreement. ECF No. 74 at 13. The settlement agreement included a
2 confidentiality provision, which Plaintiffs contend was meant to conceal from the
3 bankruptcy court and from Plaintiffs the sale of a particular block of property.
4 ECF No. 74 at 13.

5 Plaintiffs further allege in the Second Amended Complaint that
6 AmericanWest sold Plaintiffs' property "for greatly diminished prices[,]” ECF No.
7 74 at 3, which Plaintiffs argue were the result of the other Defendants' efforts to
8 devalue the property, ECF No. 85 at 15.

9 In the first and second claims of the Second Amended Complaint, Plaintiffs
10 allege that NWF, T-16, Mr. Johnson, Mr. Wyles and AmericanWest violated
11 provisions of the Racketeer Influenced and Corrupt Organizations Act ("RICO")
12 found at 18 U.S.C. § 1962(c), (d). ECF No. 74 at 17, 21. Plaintiffs also claim that
13 AmericanWest and SKBHC committed civil rights violations, which Plaintiffs
14 pursue under 42 U.S.C. §§ 1981, 1982, 1985(3), and 1986. ECF No. 74 at 23-24.

15 ANALYSIS

16 As noted at the beginning of this Order, two motions to dismiss and two
17 motions for summary judgment currently are pending in this matter. For the
18 reasons discussed below, the Court finds that Plaintiffs have failed to state claims
19 upon which relief can be granted against all remaining Defendants. Thus, the
20 Court reviews the Second Amended Complaint under the standard of a motion to
21 dismiss.

1 *Motion to Dismiss Standard*

2 The Federal Rules of Civil Procedure allow for the dismissal of a complaint
3 where the plaintiff fails to state a claim upon which relief can be granted. Fed. R.
4 Civ. P. 12(b)(6). A motion to dismiss brought pursuant to this rule “tests the legal
5 sufficiency of a claim.” *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). The
6 Supreme Court has offered the following method for assessing the sufficiency of a
7 complaint:

8 [A] court considering a motion to dismiss can choose to begin by
9 identifying pleadings that, because they are no more than conclusions,
10 are not entitled to the assumption of truth. While legal conclusions
11 can provide the framework of a complaint, they must be supported by
factual allegations. When there are well-pleaded factual allegations, a
court should assume their veracity and then determine whether they
plausibly give rise to an entitlement to relief.

12 *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

13 To withstand dismissal, a complaint must contain “enough facts to state a
14 claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S.
15 544, 570 (2007). “A claim has facial plausibility when the plaintiff pleads factual
16 content that allows the court to draw the reasonable inference that the defendant is
17 liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678. A plaintiff is not
18 required to establish a probability of success on the merits; however, he or she
19 must demonstrate “more than a sheer possibility that a defendant has acted
20 unlawfully.” *Id.* (citing *Twombly*, 550 U.S. at 556).

1 1. *Michelle Wyles and Linda Johnson*

2 As an initial matter, Plaintiffs do not appear to assert that Defendants
3 Michelle Wyles or Linda Johnson committed any wrongdoing. In regard to Ms.
4 Wyles, Plaintiffs admit that they included her in this action because Mr. Wyles's
5 alleged misconduct was on behalf of the couple's community property. ECF No.
6 87 at 1 n.1. "Therefore, Michelle Wyles is included as a defendant for purposes . .
7 . affecting relief only." ECF No. 87 at 1 n.1. Plaintiffs apparently named Ms.
8 Johnson as a defendant for the same reason. *See* ECF No. 74 (Second Amended
9 Complaint listing Ms. Johnson only in caption and introductory paragraph).

10 "Under Washington law a personal judgment against a married man is
11 presumed to be against the community." *United States v. Overman*, 424 F.2d
12 1142, 1148 (9th Cir. 1970). Thus, a defendant's spouse need not be named in an
13 action in order to obtain a judgment against the marital community. *See La*
14 *Framboise v. Schmidt*, 42 Wn.2d 198, 200 (1953).

15 Here, because Plaintiffs do not claim that Ms. Wyles or Ms. Johnson
16 committed any misconduct, the Court finds that it is appropriate to dismiss them
17 from this action on that basis.

18 2. *RICO*

19 Plaintiffs claim that NWF, T-16, Mr. Johnson, Mr. Wyles and
20 AmericanWest (collectively, "RICO Defendants") violated RICO provisions found
21 at 18 U.S.C. § 1962(c), (d). ECF No. 74 at 17-22. Subsection (c) prohibits any
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1 person associated with an enterprise that conducts interstate commerce from
 2 participating in the enterprise's affairs through a "pattern of racketeering activity"
 3 or collection of unlawful debt. 18 U.S.C. § 1962(c). Subsection (d) proscribes the
 4 conspiracy to violate subsection (c). 18 U.S.C. § 1962(d).

5 "Racketeering activity" includes any act that is indictable under the Hobbs
 6 Act, 18 U.S.C. § 1951, and a number of specified acts that are "chargeable under
 7 State law and punishable by imprisonment for more than one year." 18 U.S.C. §
 8 1961(1)(A), (B); *see also United Bhd. of Carpenters & Joiners of Am. v. Bldg. &*
 9 *Const. Trades Dep't, AFL-CIO*, 770 F.3d 834, 837 (9th Cir. 2014). A plaintiff
 10 must allege at least two predicate racketeering acts to state a "pattern" of
 11 racketeering that would establish a RICO violation. 18 U.S.C. § 1961(5); *Turner*
 12 *v. Cook*, 362 F.3d 1219, 1229 (9th Cir. 2004). "A 'pattern' of racketeering activity
 13 also requires proof that the racketeering predicates are related and 'that they
 14 amount to or pose a threat of continued criminal activity.'" *Turner*, 362 F.3d at
 15 1229 (quoting *H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 239 (1989)).

16 Here, Plaintiffs allege that some or all of the RICO Defendants committed
 17 extortion, bankruptcy fraud, and mail and wire fraud, all of which are predicate
 18 racketeering acts. *See* ECF No. 74 at 19-20; 18 U.S.C. § 1961(1) (identifying
 19 extortion, "any offense involving fraud connected with a [bankruptcy] case[,]” and
 20 mail and wire fraud as predicate RICO acts). The Court considers whether
 21 Plaintiffs sufficiently have pleaded any of the alleged RICO predicate acts.

1 *a. Extortion*

2 Plaintiffs allege that the RICO Defendants committed acts of extortion under
 3 the Hobbs Act and state law by conspiring to obtain and in fact obtaining
 4 Plaintiffs' real property "with Plaintiffs' consent, induced by the wrongful use of
 5 fear of economic harm . . ." ECF No. 74 at 19-20.

6 The Hobbs Act defines extortion as "the obtaining of property from another,
 7 with his consent, induced by wrongful use of actual or threatened force, violence,
 8 or fear, or under color of official right." 18 U.S.C. § 1951(b)(2).² "Fear," in this
 9 context, "can include fear of economic loss." *United Bhd. of Carpenters*, 770 F.3d
 10 at 838. However, because fear of economic loss also plays a lawful role in
 11 business transactions, courts must "differentiate between legitimate use of
 12 economic fear—hard bargaining—and wrongful use of such fear—extortion." *Id.*
 13 Although it can be difficult to distinguish hard bargaining from extortion, the Ninth
 14 Circuit has relied on a Supreme Court holding "that a defendant violates the Hobbs
 15 Act only 'where the obtaining of the property would itself be "wrongful" because
 16 the alleged extortionist has no lawful claim to that property.'" *Id.* (quoting *United*
 17 *States v. Enmons*, 410 U.S. 396, 400 (1973)).

18 _____
 19 ² Washington State law provides that "[e]xtortion" means knowingly to obtain or attempt to
 20 obtain by threat property or services of the owner . . ." RCW 9A.56.110. Although Plaintiffs
 21 listed both state and federal law in the section of the Second Amended Complaint regarding
 extortion, Plaintiffs discuss only the federal definition in their briefing and do not contend that
 federal and state extortion laws differ materially. *See, e.g.*, ECF No. 87 at 10-12. Accordingly,
 the Court considers the federal definition of the term.

1 The primary Defendants responsible for the alleged extortion were DCI and
2 its related entities. As the Court found in a prior order, however, Plaintiffs failed
3 to plead sufficiently that DCI or the related entities committed extortion. ECF No.
4 128 at 13-16. Plaintiffs failed to allege facts to support their claim that DCI used
5 fear to induce Plaintiffs to enter into the original business relationship with DCI or
6 that fear was a tool that DCI later employed when it allegedly attempted to obtain
7 Plaintiffs' property in the course of bankruptcy.

8 Here, for the same reasons discussed in the order regarding DCI, Plaintiff's
9 more tangential theory of extortion against the RICO Defendants who managed the
10 orchards also lacks merit. Even assuming that these Defendants intentionally
11 mismanaged the orchards, it is undisputed that T-16 and NWFM (and, in turn, Mr.
12 Johnson and Mr. Wyles as officers of those entities) had lawful authority to operate
13 the property because of the bankruptcy court's appointment order. In other words,
14 the facts as alleged by Plaintiffs are inconsistent with the theory that these
15 Defendants somehow used force or fear to coerce Plaintiffs to part with their
16 property.

17 Plaintiffs' assertion that AmericanWest committed extortion also is pleaded
18 insufficiently. Plaintiffs argue that AmericanWest participated in the enterprise so
19 that it and DCI could sell the orchards to friends and customers for greatly reduced
20 prices. ECF No. 85 at 15. Plaintiffs also aver that AmericanWest's allegedly
21 discriminatory denial of Plaintiffs' credit applications and excessive collateral

1 requirements support their allegation of extortion. ECF No. 85 at 15-16.
2 However, Plaintiffs do not explain how AmericanWest allegedly used economic
3 fear to induce Plaintiffs to give up their property or how AmericanWest's allegedly
4 discriminatory lending practice would have such a result.

5 The Court finds that Plaintiffs have failed to state sufficient facts to support
6 their theory that the RICO Defendants committed predicate acts of extortion.

7 *b. Fraud*

8 Plaintiffs also contend that the RICO Defendants committed predicate RICO
9 acts of bankruptcy fraud in violation of 18 U.S.C. §§ 152 and 153. ECF No. 74 at
10 20. Section 152 prohibits, among other acts, knowingly and fraudulently
11 concealing property of a bankruptcy estate and knowingly and fraudulently making
12 a false declaration in or in relation to a bankruptcy case. 18 U.S.C. § 152(1), (3).
13 Section 153 prohibits certain persons with access to bankruptcy estate property or
14 documents from knowingly and fraudulently appropriating or embezzling the
15 estate's property. 18 U.S.C. § 153. Section 153 applies to "one who has access to
16 property or documents belonging to an estate by virtue of the person's participation
17 in the administration of the estate[,"] such as the employee of a trustee or
18 custodian. *See* 18 U.S.C. § 153(b).

19 Like other fraud claims, RICO predicate acts of fraud must meet the
20 heightened pleading requirement found in Federal Rule of Civil Procedure 9(b).

21 *See, e.g., Schreiber Distrib. Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1400-

1 01 (9th Cir. 1986). “Rule 9(b) requires that the pleader state the time, place, and
2 specific content of the false representations as well as the identities of the parties to
3 the misrepresentation.” *Moore v. Kayport Package Exp., Inc.*, 885 F.2d 531, 541
4 (9th Cir. 1989). The heightened pleading requirement “serves the federal rule’s
5 purpose by apprising the defendant or defendants of the nature of the claim and the
6 acts or statements or failures to disclose relied upon by the plaintiff as constituting
7 the fraud being charged against each of them.” 5A Charles Alan Wright et al.,
8 *Federal Practice and Procedure* § 1297 (3d ed.).

9 After carefully reviewing the Second Amended Complaint, the Court finds
10 that all but one of Plaintiffs’ alleged incidents of fraudulent conduct lack sufficient
11 particularity. The Court considers below each of the alleged RICO predicate acts
12 of fraud.

13 *i. T-16’s Failure to Protect Orchards from Frost*

14 Plaintiffs claim that, for over a week after COV turned over control of the
15 orchards to T-16, no farming activities took place “despite the fact that Plaintiff
16 Jose Cervantes warned T-16 repeatedly of the need for frost protection.” ECF No.
17 74 at 8.

18 Assuming the veracity of Plaintiffs’ assertions, the Court finds that Plaintiffs
19 allege facts that arguably support a RICO predicate act of bankruptcy fraud.
20 Plaintiffs allege that T-16 purposefully failed to care for the property during the
21 first week that it was in T-16’s care, with the intention of lowering the property’s

1 value so that it could be acquired by other members of the alleged enterprise. *See*
 2 ECF No. 74 at 8-9, 11. In other words, Plaintiffs' description sufficiently alleges
 3 fraud because it is "accompanied by 'the who, what, when, where, and how' of the
 4 misconduct charged." *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th
 5 Cir. 2003) (quoting *Cooper v. Pickett*, 137 F.3d 616, 627 (9th Cir. 1997)) (internal
 6 quotation marks omitted).

7 Thus, Plaintiffs arguably have alleged one predicate RICO act.

8 *ii. Removal of Smudge Pots*

9 Plaintiffs further allege that "persons believed to be employed by NWFM"
 10 stole truckloads of smudge pots from the orchards and transported them to property
 11 owned by Mr. Wyles and Mr. Anderson. ECF No. 74 at 9.

12 Unlike the assertion that T-16 committed fraud by intentionally neglecting
 13 the orchards, Plaintiffs do not provide sufficient specificity regarding the allegation
 14 that NWFM stole smudge pots from COV. The Court notes that failing to identify
 15 the individuals who allegedly took the property is not alone a basis for concluding
 16 that Plaintiffs do not meet heightened pleading requirements. *See* Charles Alan
 17 Wright et al., *supra*, at § 1298 ("[Rule 9(b)] does not require absolute particularity
 18 or a recital of the evidence, especially when some matters are beyond the
 19 knowledge of the pleader and can only be developed through discovery.").

20 However, Plaintiffs fail to plead when the smudge pots were stolen or what facts
 21 support their belief that NWFM employed the persons who took the property. The

1 Court finds that such information is necessary to apprise the RICO Defendants of
 2 the claims brought against them. *Cf. Perkumpulan Investor Crisis Ctr. Dressel-*
 3 *WBG v. Regal Fin. Bancorp, Inc.*, 781 F. Supp. 2d 1098, 1112 (W.D. Wash. 2011)
 4 (RICO predicate act of wire fraud pleaded with sufficient particularity where
 5 plaintiffs pleaded date, amount, transferor, and recipient of allegedly fraudulent
 6 transfers).

7 *iii. False Declaration*

8 Plaintiffs also claim that the submission of a false declaration by NWFM's
 9 co-owner, Mr. Anderson, constitutes a predicate act. ECF No. 74 at 10. The
 10 Second Amended Complaint states that the declaration caused the bankruptcy
 11 court to prohibit Mr. Cervantes from entering the orchards. *See* ECF No. 74 at 10.

12 The contents of the declaration, however, are not alleged. This does not
 13 comply with Rule 9(b)'s heightened pleading requirements. *See Edwards v. Marin*
 14 *Park, Inc.*, 356 F.3d 1058, 1066 (9th Cir. 2004) (dismissing RICO claim because
 15 although plaintiff named the parties involved and alleged the time and place that
 16 purportedly fraudulent legal notices were delivered, complaint failed to allege
 17 notices' specific contents, and plaintiff failed to attach notices to her complaint or
 18 to any other filing).

19 *iv. Various Damage to Orchards*

20 Plaintiffs allege additionally that "T-16, NWFM, Anderson, and Wyles,
 21 aided and abetted by Deere Credit, Inc.[,]" embezzled property from the

1 bankruptcy estate, charged COV expenses for labor and equipment that were used
2 on other property, and applied minimal labor and resources to the estate property.

3 *See* ECF No. 74 at 10-11.

4 However, “Rule 9(b) does not allow a complaint to merely lump multiple
5 defendants together but ‘require[s] plaintiffs to differentiate their allegations when
6 suing more than one defendant . . . and inform each defendant separately of the
7 allegations surrounding his alleged participation in the fraud.’” *Swartz v. KPMG
8 LLP*, 476 F.3d 756, 764-65 (9th Cir. 2007) (quoting *Haskin v. R.J. Reynolds
9 Tobacco Co.*, 995 F. Supp. 1437, 1439 (M.D. Fla. 1998)).

10 The Court finds that Plaintiffs impermissibly alleged that multiple RICO
11 Defendants committed a variety of predicate acts. Without specification of which
12 defendants committed which allegedly fraudulent acts, the RICO Defendants are
13 not able to defend themselves properly. *See Destfino v. Reiswig*, 630 F.3d 952,
14 958-59 (9th Cir. 2011) (affirming dismissal because plaintiff failed to allege which
15 defendants were accused of each fraudulent statement or act). It seems that rather
16 than investigating these alleged acts before filing suit, Plaintiffs have elected to
17 wait until later in the progress of this case to attribute acts to specific RICO
18 Defendants. Such a strategy is not allowed under Rule 9(b). *See* Charles Alan
19 Wright et al., *supra*, at § 1296 (“[A] heightened pleading requirement imparts a
20 note of seriousness and encourages a greater degree of pre-institution investigation
21 by the plaintiff.”)

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1 *v. Concealment of Settlement Agreement*

2 Plaintiffs also claim that “Deere Credit, Inc., NWFM, Anderson, Wyles, and
 3 T-16” committed bankruptcy fraud by seeking to conceal from the bankruptcy
 4 court a settlement agreement that would have revealed the sale of the property as
 5 well as the true extent of the damage to the collateral property. *See* ECF Nos. 74 at
 6 13; 87 at 13.

7 Again, similar to the allegations of damage to the orchards, Plaintiffs
 8 incorrectly lump the RICO Defendants together instead of specifying how each
 9 defendant contributed to the alleged fraud.

10 Additionally, to the extent that Plaintiffs rely on the existence of a
 11 confidentiality provision in the alleged settlement agreement to assert that the
 12 named defendants intended to conceal the agreement from the bankruptcy court,
 13 the proposition is not plausible. The Court takes judicial notice of the fact that
 14 settlement agreements commonly include confidentiality provisions.³

15 In sum, Plaintiffs have alleged at most one predicate RICO act of fraud,
 16 which is insufficient to plead a substantive RICO violation under 18 U.S.C. §
 17 1962(c). *See* 18 U.S.C. § 1961(5) (“‘pattern of racketeering activity’ requires at
 18

19 ³ Plaintiffs’ mail and wire fraud claims apparently are based on the same substantive factual
 20 assertions as the alleged bankruptcy fraud. *See* ECF No. 74 at 20; *see also, e.g.*, ECF No. 87 at
 21 13 (“... Plaintiffs will seek to offer proof that mailings and/or wirings were made to demand a
 copy of the [settlement] agreement”). The mail and wire fraud claims fail for the same reasons
 discussed above in regard to the alleged bankruptcy fraud.

1 least two acts of racketeering activity").⁴ Because Plaintiffs have not stated a
 2 substantive RICO claim, their RICO conspiracy claim fails as well. *See Religious*
 3 *Tech. Ctr. v. Wollersheim*, 971 F.2d 364, 367 n.8 (9th Cir. 1992) ("Because we
 4 find that [plaintiff] has failed to allege the requisite substantive elements of RICO,
 5 the conspiracy cause of action cannot stand.").⁵

6 3. *Lending Discrimination*

7 Plaintiffs contend that AmericanWest and SKBHC violated Plaintiffs' civil
 8 rights. ECF No. 74 at 23-24. AmericanWest and SKBHC argue that these claims
 9 should be dismissed because they are barred by statutes of limitations. ECF No. 76
 10 at 2.

11 Plaintiffs assert discrimination claims pursuant to 42 U.S.C. §§ 1981, 1982,
 12 1985(3), and 1986. ECF No. 74 at 22-23. The parties do not dispute that a four-
 13 year statute of limitations governs Plaintiffs' claim brought under § 1981. *See*
 14 *Jones v. R.R. Donnelley & Sons Co.*, 541 U.S. 369, 383-85 (2004) (discussing 28

15
 16 ⁴ Moreover, as discussed below, the Court finds that the Second Amended Complaint as a whole
 17 lacks plausibility.

18 ⁵ In opposition to the Wyles' motion to dismiss, Plaintiffs refer to their allegation that NWFN
 19 lacked necessary farm labor licensing and that T-16 and DCI were aware of that fact. ECF No.
 20 87 at 5. Plaintiffs contend that this supports the "conduct" element of the civil racketeering
 21 claim" against Mr. Wyles, who was a partial owner of NWFN. *See* ECF No. 87 at 5. However,
 it is unclear whether Plaintiffs assert that NWFN's alleged failure to obtain proper licensing and
 T-16's knowledge of that fact constitute fraud or some other predicate act. Plaintiffs have not
 pleaded sufficient facts for the Court to discern how this alleged conduct could constitute
racketeering.

1 U.S.C. § 1658).⁶ Washington's three-year statute of limitations for personal injury
 2 actions, RCW 4.16.080(2), governs claims brought pursuant to 42 U.S.C. §
 3 1985(3). *See Taylor v. Regents of Univ. of Cal.*, 993 F.2d 710, 711 (9th Cir. 1993)
 4 (per curiam) (applying California's analogous statute of limitations). The same
 5 rule controls § 1982 claims. *See Mitchell v. Sung*, 816 F. Supp. 597, 600 (N.D.
 6 Cal. 1993) ("Because section 1982 does not have a statute of limitations, courts
 7 apply the applicable state statute of limitations."). A one-year statute of limitations
 8 applies to claims under § 1986. 42 U.S.C. § 1986.

9 Although the relevant state statute of limitations applies to some of
 10 Plaintiffs' civil rights claims, federal law determines when a civil rights claim
 11 accrues. *See Olsen v. Idaho State Bd. of Med.*, 363 F.3d 916, 926 (9th Cir. 2004)
 12 (citing *Morales v. City of Los Angeles*, 214 F.3d 1151, 1153-54 (9th Cir. 2000)).

13 ⁶ Section 1658's four-year statute of limitations applies to actions brought under federal statutes
 14 that were enacted after December 1, 1990. *Jones*, 541 U.S. at 371. In *Jones*, the Court explained
 15 that § 1658 applies to claims that were made possible by an amendment to § 1981 that occurred
 16 after December 1, 1990. *Id.* at 383. Racial harassment in employment is an example of a § 1981
 17 claim that was not possible under the pre-1990 version of the section. *See id.* Some § 1981
 18 claims, however, instead remain subject to the most analogous statute of limitations under state
 19 law. *See, e.g., Lukovsky v. City & Cnty. of San Francisco*, 535 F.3d 1044, 1048 n.2 (9th Cir.
 20 2008) (applying forum state's statute of limitations to failure-to-hire claim, which was
 21 cognizable under pre-1990 version of § 1981). The applicable statute of limitations under
 Washington State law would be the three-year limitation for a lawsuit alleging personal injury,
 RCW 4.16.080(2). *See Beauregard v. Lewis Cnty., Wash.*, No. C05-5738-RJB, 2006 WL
 2924612, at *8 (W.D. Wash. Oct. 10, 2006) (citing *Taylor v. Regents of Univ. of Cal.*, 993 F.2d
 710, 711-12 (9th Cir. 1993)). The parties do not address whether Plaintiffs' § 1981 claim would
 have been cognizable under the pre-1990 version of the law. However, because the parties do
 not dispute that the federal four-year statute of limitations applies and because the issue does not
 affect the Court's decision, the Court assumes, for purposes of this motion, that the longer statute
 of limitations is applicable.

1 Federal law provides that “a claim accrues when the plaintiff knows or has reason
 2 to know of the injury which is the basis of the action.” *TwoRivers v. Lewis*, 174
 3 F.3d 987, 991 (9th Cir. 1999). Accrual begins on the date on which a plaintiff
 4 becomes aware of an adverse action, not when a plaintiff suspects that a legal
 5 wrong has been committed. *Lukovsky v. City & Cnty. of San Francisco*, 535 F.3d
 6 1044, 1049-50 (9th Cir. 2008).

7 Here, AmericanWest and SKBHC assert that the only discriminatory act that
 8 they allegedly committed was denying Plaintiffs’ credit application in October
 9 2009. ECF No. 76 at 3; *see also* ECF No. 74 at 14. Plaintiffs did not file their
 10 original complaint until more than four years later, on September 2, 2014. *See*
 11 ECF No. 1. In response, Plaintiffs argue that they are no less injured today
 12 “because they know if they applied for credit it would be declined as a result of
 13 defendants’ ongoing practices.” ECF No. 85 at 6. In other words, Plaintiffs
 14 contend that they have raised “allegations of continuing discriminatory lending[,]”
 15 referring to *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982). *See* ECF No.
 16 85 at 7.

17 In *Havens Realty*, the Court considered an alleged continuing violation of
 18 the Fair Housing Act. 455 U.S. at 380. All of the incidents of alleged misconduct
 19 against one plaintiff in *Havens Realty* were time-barred, but another plaintiff
 20 alleged that a Fair Housing Act violation occurred within the 180-day time limit.
 21 *Id.* at 380. The Court held “that where a plaintiff, pursuant to the Fair Housing

1 Act, challenges not just one incident of conduct violative of the Act, but an
 2 unlawful practice that continues into the limitations period, the complaint is timely
 3 when it is filed within 180 days of the last asserted occurrence of that practice.”
 4 *See id.* at 380-81 (footnote omitted). In other words, “because [one] incident fell
 5 within the limitations period, none of the claims was barred.” *See id.* at 380.

6 Here, unlike in *Havens Realty*, Plaintiffs refer to no incidents of alleged
 7 misconduct that occurred within four years of the date on which they filed their
 8 original complaint. Thus, Plaintiffs cannot rely on a theory of continuing
 9 discrimination to circumvent the applicable statutes of limitation, which bar their
 10 civil rights claims.

11 In sum, the Court finds that Plaintiffs have failed to state an actionable claim
 12 that AmericanWest or SKBHC violated their civil rights.

13 *4. Plausibility*

14 Having explained in detail why Plaintiffs’ allegations in the Second
 15 Amended Complaint fail to state a claim, the Court finds that it is necessary also to
 16 note an alternative and troubling basis for dismissing this action.

17 Although Plaintiffs assert that Defendants were motivated by racial and
 18 ethnic animosity to deprive Plaintiffs of their land and livelihood, a serious
 19 contention, the factual allegations supporting such an egregious goal are
 20 surprisingly paltry. The most direct allegation concerning discrimination was
 21 brought against former Defendant Northwest Farm Credit Services, whose

1 employee allegedly responded to Mr. Cervantes's inquiry about the denial of a loan
2 application with the statement: "You people don't pay." *See* ECF No. 74 at 16.
3 However, Northwest Farm Credit Services was not included in Plaintiffs' RICO
4 claims. *See* ECF No. 74 at 17, 21.

5 Against the RICO Defendants, Plaintiffs offer only conclusory statements
6 that prejudice guided their actions. *See, e.g.*, ECF No. 74 at 5 ("[T]his enterprise
7 worked together to exact excessive terms and conditions upon the Plaintiffs and
8 other Hispanic farming operators by failing to release collateral demanded to
9 secure repayment of loans and credit lines"), 19 ("[T]he course of conduct
10 engaged in by said RICO defendants was designed to deprive Plaintiffs and
11 similarly situated farming operators and owners who are of Hispanic origin of their
12 interests in business and/or property.").

13 The Court does not imply that allegations of racial discrimination are
14 necessary for Plaintiffs to bring a RICO action. However, in the absence of factual
15 allegations to support Plaintiffs' claims of discriminatory intent, or any other basis
16 for believing that Defendants' actions were the result of a coordinated attempt to
17 obtain Plaintiffs' property and business, Plaintiffs' RICO claim simply is
18 implausible. The Court repeats the reasoning adopted in its order dismissing the
19 Deere Defendants, who appear to be the principal actors in Plaintiffs' alleged
20 RICO enterprise:

1 In response to this lawsuit, the Deere Defendants have proffered that
 2 after COV failed to repay its debt in accordance with the bankruptcy
 3 plan, the Deere Defendants sought appointment of a liquidating agent,
 4 which the bankruptcy court approved. “As between that ‘obvious
 5 alternative explanation’ for [the Deere Defendants’ actions] and the
 6 purposeful, invidious discrimination [that Plaintiffs ask the Court] to
 7 infer, discrimination is not a plausible conclusion.”

8 ECF No. 128 at 24 (quoting *Iqbal*, 556 U.S. at 682 (internal citation omitted)).

9 While the complex RICO scheme asserted in Plaintiffs’ Second Amended
 10 Complaint is of course possible, it is not plausible. “Where a complaint pleads
 11 facts that are ‘merely consistent with’ a defendant’s liability, it ‘stops short of the
 12 line between possibility and plausibility of ‘entitlement to relief.’” *Iqbal*, 556 U.S.
 13 at 678 (quoting *Twombly*, 550 U.S. 557). The Court finds that Plaintiffs’ allegation
 14 of a broad, discriminatory scheme is implausible.

15 *5. Dismissal with Prejudice*

16 Leave to amend a complaint should be granted freely when justice so
 17 requires. Fed. R. Civ. P. 15(a). However, “liberality in granting leave to amend is
 18 subject to several limitations.” *Ascon Properties, Inc. v. Mobil Oil Co.*, 866 F.2d
 19 1149, 1160 (9th Cir. 1989) (citing *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183,
 20 186 (9th Cir. 1987)). “Leave need not be granted where the amendment of the
 21 complaint would cause the opposing party undue prejudice, is sought in bad faith,
 constitutes an exercise in futility, or creates undue delay.” *Id.* Additionally, “[t]he
 district court’s discretion to deny leave to amend is particularly broad where
 plaintiff has previously amended the complaint.” *Id.*

1 Plaintiffs' original complaint spanned 337 pages, divided into 737
2 paragraphs. ECF No. 1. The First Amended Complaint, comprising 143 pages,
3 was accompanied by a 469-page RICO Case Statement. ECF Nos. 29, 29-1. In
4 addition to their unusual length, Plaintiffs' first two pleadings were difficult to
5 comprehend.

6 The Court ordered Plaintiffs to file a Second Amended Complaint, with a set
7 page limit. ECF No. 72. The Second Amended Complaint presented a clearer
8 picture of Plaintiffs' claims. However, after significant expenditure of resources
9 by the Court and, presumably, by Defendants, the Court has determined that those
10 claims fail as a matter of law.

11 For the reasons discussed throughout this Order, the Court finds that
12 allowing Plaintiffs to amend their claims would be futile and would cause undue
13 prejudice to Defendants. The Court dismisses Plaintiffs' Second Amended
14 Complaint with prejudice.

15 *6. Attorney Fees*

16 The Wyles request attorney fees and costs for the expense of defending
17 against this lawsuit. ECF No. 79 at 12. “[The Court’s] basic point of reference
18 when considering the award of attorney’s fees is the bedrock principle known as
19 the American Rule: Each litigant pays his own attorney’s fees, win or lose, unless
20 a statute or contract provides otherwise.” *Hardt v. Reliance Standard Life Ins. Co.*,
21 560 U.S. 242, 252-253 (2010) (internal quotation marks omitted).

1 The Wyles' request for attorney fees and costs is unaccompanied by any
2 reference to the applicable authority for imposing such a sanction. The Court
3 denies the Wyles' request at this time, but the Court will entertain motions for
4 sanctions that include a discussion of relevant authority.

5 Accordingly, **IT IS HEREBY ORDERED:**

- 6 1. Defendants AmericanWest Bank and SKBHC Holdings LLC's
7 Motion to Dismiss, **ECF No. 76**, is **GRANTED**.
- 8 2. Defendants Robert and Michelle Wyles's Motion to Dismiss, **ECF**
9 **No. 79**, is **GRANTED**.
- 10 3. The Second Amended Complaint is **DISMISSED WITH**
11 **PREJUDICE**.
- 12 4. Defendants T-16 Management Co., Ltd., and Gary and Linda
13 Johnson's Motion for Summary Judgment, **ECF No. 88**, is **DENIED**
14 **AS MOOT**.
- 15 5. Defendant SKBHC Holdings LLC's Motion for Summary Judgment,
16 **ECF No. 122**, is **DENIED AS MOOT**.

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6. Any motion for attorney fees shall be filed **within 30 days** of the date of this Order, even though the Court will instruct the Clerk's Office to close the case administratively.

The District Court Clerk is directed to enter this Order, provide copies to counsel, enter judgment accordingly, and **CLOSE** this case.

DATED this 17th day of July 2015.

s/ Rosanna Malouf Peterson
ROSANNA MALOUF PETERSON
Chief United States District Court Judge